

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1303**

State of Minnesota,
Respondent,

vs.

Leo Alf Curtis,
Appellant.

**Filed August 12, 2024
Affirmed
Smith, Tracy M., Judge**

Washington County District Court
File No. 82-CR-21-2720

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kevin Magnuson, Washington County Attorney, Andrew T. Jackola, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Max B. Kittel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from a final judgment of conviction for first-degree criminal sexual conduct following his guilty plea, appellant argues that the district court abused its

discretion by denying his motion for a downward dispositional departure in sentencing. We discern no abuse of discretion, and we affirm.

FACTS

In February 2023, respondent State of Minnesota charged appellant Leo Alf Curtis in an amended complaint with two counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. These charges stemmed from allegations of sexual abuse made by Curtis's granddaughter, G.C.

According to the original complaint filed in 2021, G.C., who was 14 years old at the time, was being treated for a suicide attempt when she disclosed that Curtis had repeatedly sexually assaulted her when she was between the ages of 7 and 11 years old. In a subsequent statement, G.C. reported that the abuse began as early as age two and that Curtis penetrated her vagina with his penis in August 2018.

On February 27, 2023, Curtis pleaded guilty to one count of first-degree criminal sexual conduct. Curtis admitted that he intentionally penetrated G.C.'s vagina with his finger with sexual intent. Pursuant to the plea agreement, the remaining counts were dismissed. The state argued for a guidelines sentence and Curtis moved for a downward dispositional departure, requesting a stayed sentence.

In support of his motion, Curtis argued that his lack of criminal history, prior success on probation, age, health, and low likelihood to reoffend demonstrated his particular amenability to probation. Curtis also argued that he was particularly unamenable to a prison sentence because of his age and health concerns.

The district court denied Curtis’s motion and sentenced him to the guidelines sentence of 144 months in prison. Curtis appeals.

DECISION

The Minnesota Sentencing Guidelines “prescrib[e] a sentence or range of sentences that is presumed to be appropriate.” *State v. Soto*, 855 N.W.2d 303, 308 (Minn. 2014) (quotation omitted). The district court must order the presumptive sentence provided in the sentencing guidelines unless “aggravating or mitigating circumstances are present, and those circumstances provide a substantial and compelling reason not to impose a guidelines sentence.” *Id.* (quotations and citation omitted); *see also* Minn. Sent’g Guidelines 2.D (2008) (stating that court has discretion to depart from presumptive sentence only when “substantial and compelling circumstances” are present). The district court is not required to provide an explanation when it considers reasons for departure but chooses to impose the presumptive sentence. *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985).

Appellate courts “will not ordinarily interfere with a sentence falling within the presumptive sentence range, either dispositionally or durationally, even if there are grounds that would justify departure.” *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006) (quotation omitted). Appellate courts “will affirm the imposition of a presumptive guidelines sentence when the record shows that the sentencing court carefully evaluated all the testimony and information presented before making a determination.” *State v. Johnson*, 831 N.W.2d 917, 925 (Minn. App. 2013) (quotation omitted), *rev. denied* (Minn. Sept. 17, 2013). A district court has great discretion when making sentencing decisions, and appellate courts will reverse those decisions only when the district court abuses that

discretion. *Soto*, 855 N.W.2d at 307-08. “Only in a rare case will a reviewing court reverse the imposition of a presumptive sentence.” *State v. Pegel*, 795 N.W.2d 251, 253 (Minn. App. 2011).

A downward dispositional departure may be based on a determination that the defendant is “particularly amenable to individualized treatment in a probationary setting.” *State v. Wright*, 310 N.W.2d 461, 462 (Minn. 1981). In evaluating a defendant’s particular amenability to probation, a district court may consider factors including the defendant’s age, prior record, remorse, cooperation, attitude while in court, and support of friends and family. *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Curtis argues that there were substantial and compelling reasons to depart because the record shows that he is particularly amenable to probation and particularly unamenable to a lengthy prison sentence and therefore “the district court’s denial of [his] departure motion went against logic and the facts in the record and was an abuse of the court’s discretion.” We are not persuaded.

Curtis first points to the results of a sex-offender risk assessment, which placed him at a “very low risk” to reoffend, and the results of the case management inventory for probation, which suggested that Curtis be placed on monitored supervision. These results were conveyed in the presentence investigation (PSI) and psychosexual evaluation reports. At sentencing, the district court stated that it had reviewed both reports. The district court acknowledged Curtis’s argument that he was particularly amenable to probation because the risk-assessment report indicated that “[he is] very low risk.” But the district court, by

denying a dispositional departure, implicitly determined that the PSI and the psychosexual evaluation did not provide a substantial and compelling reason to depart.

Furthermore, “the mere fact that the person who prepared a report for the district court reached a certain conclusion does not necessarily justify departing from the presumptive disposition under the guidelines.” *Soto*, 855 N.W.2d at 309 (quotations omitted). In *Soto*, the district court relied on an assessment that the defendant could be an appropriate candidate for outpatient treatment in determining that the defendant was amenable to probation. *Id.* But the Minnesota Supreme Court concluded that a finding of suitability for outpatient treatment did not establish that an individual was necessarily “particularly amenable” to probation. *Id.* at 310 (emphasis omitted) (quotation omitted). While the assessments here may be valuable in assessing the amount of supervision needed for probation for a specific crime, they are not determinative as to the question of whether Curtis is particularly amenable to probation.

Second, Curtis argues that his age, criminal history, and prior success on probation demonstrate that he is particularly amenable to probation. At the time of the PSI, Curtis was 75 years old, and, during the psychosexual evaluation, he reported that he has high blood pressure caused by high cholesterol, which requires him to use blood thinners “for the rest of [his] life.” At sentencing, defense counsel agreed that the PSI accurately reflected that Curtis’s criminal history included two prior offenses: (1) receipt of stolen property in 1969, for which he served two years on probation, and (2) misdemeanor allowing junk cars in his yard in 2001, for which he received a one-year stay of adjudication. Again, the record demonstrates that the district court, by reviewing the PSI

and psychosexual evaluation reports, reviewed these facts before making its decision. Further, at the sentencing hearing, the district court expressed an understanding about Curtis's age before concluding that it was not a substantial and compelling reason to depart.

Third, Curtis argues that he is particularly unamenable to a lengthy prison sentence because of his age and health issues. This information was also contained in the PSI and psychosexual evaluation reports, which the district court reviewed before making its decision. And the district court explicitly acknowledged Curtis's age and health conditions on the record and concluded that these circumstances were not substantial or compelling reasons to depart.

Furthermore, at sentencing, the district court stated that Curtis "ha[d] not demonstrated any remorse" and that it was concerned with his denial regarding the offense.

In a written statement submitted for the PSI, Curtis wrote:

Understanding my incident would be greatly useful – it was wrong to do, but as I consoled her from her nightmares, I rubbed her lower chest area and stomach, she would guide my hand with her hand to her private area. After 30 seconds or so she would fall asleep. Yet it was very wrong in doing so, it was about what it took to get her to relax. She would say, "Grandpa if you really loved me, you would do it." She kept coming back. Wrong thing to do I know, but if I didn't help her [calm] down why come back. Nightmare after nightmare, she never told me what they were about.

And during a subsequent interview, Curtis "maintain[ed] his innocence" and, in elaborating on his written statement, "stat[ed] he was only comforting his granddaughter . . . and did not sexually touch her." He stated that he "may have" touched his granddaughter's "private parts briefly" but he only did so "in a comforting way and not in a sexually motivated way."

During the psychosexual evaluation, Curtis characterized the offense as “some kind of touching my granddaughter.” He said, “I had to plead to something like touching, even if it is nothing.” He also stated that he “never did what she is saying.” Curtis also stated, “If it’s so bad, why did she keep coming back at night until she turned 14 or 15 and then come up with this charge?” When asked about his charges a second time during the psychosexual evaluation, Curtis stated that he “rubbed [G.C.’s] chest and belly, she would grab [his] hand and move it down there but there was no penetration or contact with her vaginal area.” Then, at sentencing, Curtis spoke on his own behalf, stating, “I’m sorry [for] what I did, but I didn’t do everything to her.”

The district court was not required to depart even though there was some evidence that might arguably justify departure. *See Bertsch*, 707 N.W.2d at 668. And the record demonstrates that the district considered the relevant evidence supporting departure before denying Curtis’s motion for a downward dispositional departure. *See Johnson*, 831 N.W.2d at 925. Further, the district court expressed concern regarding Curtis’s lack of remorse and denial, which were supported by ample evidence in the record. The district court explained, “[D]enial is a concern because . . . , at this point, it’s more so about you moving forward and how you want to deal with your life.” On this record, we conclude that the district court acted within its broad discretion by denying Curtis’s motion for a downward dispositional departure.

Affirmed.